

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION**

**DANA BECK**

**PLAINTIFF**

**v.**

**Case No. 3:19-cv-00066 KGB**

**KUM & GO, LC, KRAUSEWA, LC,  
and SENECA COMPANIES, INC.**

**DEFENDANTS**

**ORDER**

Pending before the Court is motion for partial summary judgment submitted by defendants Kum & Go, L.C. (“Kum & Go”) and Krausewa, L.C. (“Krausewa”) (Dkt. No. 4). Plaintiff Dana Beck filed a response to the motion (Dkt. No. 7). For the following reasons, the Court denies as moot defendants’ motion for partial summary judgment (Dkt. No. 4).

Plaintiff Dana Beck initiated this action on August 15, 2018, in Craighead County Circuit Court, and this was removed to this Court on March 26, 2019 (Dkt. Nos. 1, 2). Initially, Ms. Beck brought suit only against Kum & Go and Krausewa (Dkt. No. 2). After Kum & Go and Krausewa filed their pending motion for partial summary judgment, Ms. Beck amended her complaint on February 27, 2019, and added Seneca Companies, Inc. (“Seneca”) as a defendant (Dkt. No. 6). In her amended complaint, Ms. Beck alleges that on February 13, 2017, she visited the Kum & Go located at the corner of Johnson Avenue and Caraway Road in Jonesboro, Arkansas, to purchase fuel for her automobile (Dkt. No. 6, ¶ 7). Ms. Beck claims that, in the process of pumping the fuel, the fuel pump malfunctioned, causing the pump not to shut off when the gas tank was full as intended (*Id.*, ¶ 8). As a result, fuel began spraying from the nozzle where it was inserted into the tank and gasoline began spraying the car and the surrounding area (*Id.*). Ms. Beck asserts that she slipped on the wet fuel saturating the ground as she rushed to attempt to release the pump handle

(*Id.*, ¶ 9). Ms. Beck claims that the resulting fall caused her serious injuries, including a fractured shoulder (*Id.*).

Ms. Beck alleges three causes of action in her amended complaint: (1) negligence—failure to maintain premises; (2) products liability—strict liability; and (3) products liability—negligence (Dkt. No. 6, ¶¶ 11-34). Ms. Beck brings Count I against Kum & Go and Krausewa, Count II against defendant Seneca, and Count III against Seneca (*Id.*).

In the instant motion, separate defendants Kum & Go and Krausewa move for partial summary judgment (Dkt. No. 4). In this motion, Kum & Go and Krausewa request that this Court summarily dismiss Ms. Beck’s products liability claims against them (*Id.*, ¶ 4). Kum & Go and Krausewa assert that they were not in the business of manufacturing, supplying, selling, or distributing gasoline pumps, nor was Ms. Beck buying gasoline pumps (*Id.*, ¶ 3). Accordingly, Kum & Go and Krausewa move to dismiss these claims against them because the Arkansas Products Liability Act (“APLA”), Arkansas Code Annotated § 16-116-201, requires defendants to be in the business of selling, manufacturing, supplying, assembling, or distributing the allegedly defective product for a plaintiff to bring a products liability claim against them (*Id.*, at 3).

In response, Ms. Beck agrees to the dismissal, without prejudice, of any products liability claims pled against Kum & Go and Krausewa until such time as discovery can be completed (Dkt. No. 7, ¶ 3). Ms. Beck amended her complaint to add Seneca as a defendant and, as of now, brings her products liability claims only against Seneca (Dkt. Nos. 6, ¶¶ 20-34; 7, ¶ 3). Accordingly, Ms. Beck notes that, while she has agreed in the filing of her amended complaint to dismiss the products liability claims against Kum & Go and Krausewa based upon the information provided thus far, Ms. Beck reserves the right to re-plead those claims against Kum & Go and Krausewa in the event

that Seneca provides contrary information or additional discovery reveals support for such claims (Dkt. No. 7, ¶ 4).

Since Ms. Beck currently does not bring any products liability claims against Kum & Go and Krausewa, the Court considers moot their pending motion for partial summary judgment (Dkt. No. 4). Kum & Go and Krausewa have already received the relief they request, as Ms. Beck has voluntarily dismissed her products liability claims against them (Dkt. No. 6). Should Ms. Beck further amend her complaint and re-plead such claims against Kum & Go and Krausewa, the parties may refile their motion for partial summary judgment at that time.

So ordered this 10th day of February 2020.

A handwritten signature in black ink, reading "Kristine G. Baker". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Kristine G. Baker  
United States District Judge